

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**
441 Fourth Street, NW
Washington, DC 20001

DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
Petitioner,

v.

CHINENYE NJOKU
Respondent.

Case No.: 2011-DCRA-V700447

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, as amended (D.C. Code, 2001 Ed. §§ 2-1801.01– 2-1802.05) and D.C. Official Code § 42-3131.06(a). The Government served Notice of Infraction No.V700447 (“NOI”) on December 13, 2010, charging Respondent, Chinenye Njoku with violating D.C. Official Code § 42-3131.06(a) for failure to register vacant property. The NOI alleged that the violation occurred on July 23, 2009 at 3626 Georgia Avenue, N.W. (“Property”) and sought a \$2,000 fine.

On January 25, 2011, Respondent filed an untimely answer with a plea Deny. I, therefore, issued a Scheduling Order, initially scheduling an evidentiary hearing for March 3, 2011. On March 3, 2011, the Government appeared for the evidentiary hearing; however, Respondent failed to appear. On March 4, 2011, Respondent filed a letter requesting that the case be reheard because his assistant was pulled over by

police, which caused her to not attend the hearing. Since the assistant was not present for the hearing conducted on April 5, 2011, Respondent did not establish good cause for seeking a continuance or rehearing of this case. I, nonetheless, issued a second Scheduling Order on March 4, 2011, because the file jacket indicated that Respondent provided a different mailing address than the address used in serving the NOI. The hearing was rescheduled to April 5, 2011.

On the date of the rescheduled hearing, the Government appeared represented by Robert Renjel, Assistant Attorney General. Reuben Pemberton, program manager in the Office of Vacant Property at the Department of Consumer and Regulatory Affairs was also present to testify on behalf of the Government. Respondent appeared on his own behalf.

Based on the testimony of the witnesses, my evaluation of their credibility, the documents admitted into evidence, and the entire record herein, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

1. At all relevant times, Respondent owned the Property. The Property is vacant.
2. On June 17, 2009, Inspector Richard Smith inspected the Property. Petitioner's Exhibit "PX" 100.
3. While there, he observed a building with no window draperies, blinds, shades, or coverings and white paper posted to the doors and front windows. There was also a "For Rent" sign posted in the window.

4. Inspector Smith took a photograph of his observations. The photograph depicts a storefront building with adjoining party walls. Posted to the front door and windows is white paper covering. PX 104.

5. On September 28, 2009, Inspector Smith revisited the Property, and determined that there was no change in the outward appearance of the building structure. PX 100 and 105. That is, white covering remained posted to the windows and doors, and the “For Rent” sign was still in the window of the Property.

5. By letter dated June 19, 2009, the Government instructed Respondent to declare if the Property is vacant and, if so, to register the Property within thirty days. PX 100 and 105.

6. The letter, PX 105, was mailed to Respondent’s last known address of 634 Farragut Street, N.W., which is the same mailing address the Government used in serving the NOI, which was answered by Respondent.

7. There is no evidence that Respondent submitted the requisite registration form within 30 days of June 19, 2009.

8. By letter dated July 28, 2009, the Government notified Respondent that the vacant property was unregistered and subject to penalties. PX 100 and 105, page 2.

9. Respondent did not have a certificate of occupancy for the Property on July 23, 2009.

10. Respondent only recently applied for a certificate of occupancy.

11. Respondent previously applied for building permits to have the Property renovated, but the permits expired.

12. Respondent is no longer renovating the Property.

13. Respondent currently is using the building as a warehouse. The items stored include staging materials for real estate, furniture, and housing contents.

14. Respondent was served the NOI on December 13, 2010. Respondent untimely answered the NOI on January 25, 2011.

III. Conclusions of Law

The Government charges that Respondent violated D.C. Official Code § 42-3131.06(a) by failing to register the Property as a “vacant property.” The relevant provisions of the law state the following:

Except as provided in subsections (b) and (c) of this section, the owner of a vacant building shall maintain the building in compliance with the requirements of [§ 42-3131.12](#) and, within 30 days after it becomes a vacant building, register the building with the Mayor, and pay the registration fee. The Mayor, in his sole discretion, may extend the time for good cause.

This provision must be read in conjunction with D.C. Official Code § 42-3131.05, which states in pertinent part:

(5) "Vacant building" means real property improved by a building which, on or after April 27, 2001, has not been occupied continuously;

(3) "Occupied" means:

(B) For purposes of a commercial unit, use consistent with zoning regulations, **for which there is a current valid certificate of occupancy, and (i) paid utility receipts for**

the specified period, executed lease agreements, or sales tax return, or (ii) other evidence of use of the building that the Mayor may require by rule. [Emphasis supplied.]

Based on the plain letter of the law, the Government sustained its burden of proof by a preponderance of evidence that Respondent violated the vacant property provisions of the law as charged in the NOI. There is overwhelming proof that the Property with no window covering other than white paper posted to the windows was not occupied.

Respondent contends that because the Property is zoned for commercial use, pursuant to 11 DCMR 721.2(j), he was using the Property for indoor storage. However, he did not produce a current and valid certificate of occupancy as of July 28, 2009, authorizing use of the Property as a storage facility.

I am not persuaded by Respondent's explanation that the Property was always used as a warehouse or storage facility because Respondent also admitted that at one unspecified time period the Property was being renovated, but the necessary building permits eventually expired. To the contrary, I conclude that it is more likely so than not so that Respondent's Property was previously under active construction, but the permits expired, and the Property remained unoccupied as of the date of the violation.

Respondent also did not present any evidence as required by D.C. Official Code § 42-3131.05(3)(B) showing paid utility receipts for the specified period, or sales tax return from the Property. This again sustains the Government's case that the Property was vacant and unoccupied as of July 28, 2009.

A violation of D.C. Official Code § 42-3131.06(a) is a Class 1 offense, punishable by a fine of \$2,000 for a first offense. 16 DCMR §§ 3311.1(a); 16 DCMR 3201.1(a)(1).

The Administrative Law Judges in the Office of Administrative Hearings are authorized to suspend or reduce a fine in accordance with D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6). This administrative court has determined that reasonable cause is shown by mitigating factors such as acceptance of responsibility, corrective action taken, efforts undertaken to prevent future violations, and good faith efforts to comply. Respondent took corrective measures, albeit late, and there is no evidence of previous infractions. These are mitigating circumstances I am taking into account to reduce the authorized fine from \$2,000 to \$1,500. D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6).

The statutory penalty is a separate matter. In accordance with D.C. Official Code § 2-1802.02(f), if a respondent who has been served a notice of infraction fails without good cause to answer within the time period established by law, the respondent is liable for the penalty established pursuant to D.C. Official Code § 2-1801.04(a)(2)(A), which is a penalty equal to the amount of the civil fine. In this case, Respondent was served the NOI on December 13, 2010, and untimely answered the NOI on January 25, 2011. Respondent did not provide an explanation as to why he was delayed in answering the NOI. However, because return address on the envelope containing Respondent's answer is a different address from that used in serving the NOI, I will exercise discretion to suspend the statutory penalty, and conclude that Respondent was delayed in timely responding to the NOI because of his change of address. D.C. Official Code § 2-1801.03(b)(6).

IV. Order

Based on the above findings of fact and conclusions of law, and the entire record in this matter, it is this 11th day of April, 2011:

ORDERED, that Respondent is **LIABLE** for violation of the statute as charged in the Notice of Infraction; and it is further

ORDERED, that Respondent shall pay a reduced fine and statutory penalty in the total amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

Claudia Barber
Administrative Law Judge

PAYMENTS

If a payment is required by this Order, to be properly credited to your case(s) the payment must be sent to the attention of the Clerk of the Office of Administrative Hearings. Payments are only accepted by check or money order and must be made payable to “D.C. TREASURER.” Be sure to write the case number on the front of the check or money order. Make a photocopy of the check for your records. Enclose full payment and mail the check in an envelope with required postage to:

Clerk, Office of Administrative Hearings
441 Fourth Street, NW
Washington, DC 20001

IMPORTANT: Please do not call the D.C. Court of Appeals with questions about how to make any payments required under this Order. The D.C. Court of Appeals does not accept any payments in cases decided by the Office of Administrative Hearings.

If you have questions, please call the Clerk’s Office at the Office of Administrative Hearings on 202-442-9094.

APPEAL RIGHTS

Pursuant to D.C. Official Code § 2-1831.16(c)-(e), any party suffering a legal wrong or adversely affected or aggrieved by this Order may seek judicial review by filing a petition for review and six copies with the District of Columbia Court of Appeals at the following address

Clerk, District of Columbia Court of Appeals
430 E Street, NW
Washington, DC 20001

The petition for review (and required copies) may be mailed or delivered in person to the Clerk of the Court of Appeals, and must be received by the Clerk of the Court of Appeals within 30 calendar days of the mailing date of this Order. Information on petitions for review to the Court of Appeals can be found in Title III of the Rules of the District of Columbia Court of Appeals.

IMPORTANT NOTICES:

- 1. By law, the amount of a lawfully imposed fine cannot be modified or reduced on appeal. D.C. Official Code § 2-1831.16(g).**
- 2. Filing of a petition for review does not stay (stop) the requirement to comply with a Final Order, including any requirement to pay a fine, penalty or other monetary sanction imposed by a Final Order. If you wish to request a stay, you must first file a written motion for a stay with the Office of Administrative Hearings. If the presiding Administrative Law Judge denies a stay, you then may seek a stay from the Court of Appeals.**

CERTIFICATE OF SERVICE

By U.S. Mail (Postage Paid):

Chinenye Njoku
1134 Abbey Place, N.E.
Washington, DC 20002

I hereby certify that on _____, 2011, this document was served upon the above-named parties at the address(es) and by the means stated, and upon representatives of the Government indicated on the right by Inter-Agency Mail, return receipt requested.

Clerk / Deputy Clerk

By Inter-Agency Mail:

Melinda Bolling, Esquire
Department of Consumer and
Regulatory Affairs
1100 Fourth Street, SW
Washington, DC 20024
ATTN: Robert Renjel, Esquire